

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1036 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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AHMAD EUSUF PATEL

Versus

RAHEMTULLA GULAMHUSAIN SAIYAD

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Appearance:

MR MG NAGARKAR for Petitioners

SERVED for Respondent No. 1

MR SR DIVETIA, APP for Respondent No. 2

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CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 23/10/96

ORAL JUDGEMENT

Though the process is served respondent No.1/original complainant is absent. Mr. S.R. Divetia, learned A.P.P. for respondent No.2-State is present.

The petitioners/original accused are the members of management of a Public Trust run by Sunni Muslim Wakaf Committee. The said Trust is running a hostel in order to give boarding facility to needy students. As averred in the petition, needy students are given admission in the hostel on the basis of academic term or year on payment of necessary charges/fees. The facility so provided is nothing else but a licence given to the students to use and occupy the hostel rooms for a given academic term or year. Accordingly, the present respondent No.1/original complainant was also given admission in the hostel for the academic year 1989-90. It is averred in the petition that the respondent No.1 did not make payment of necessary charges/fees and, therefore, was not allowed to enter and use the hostel room and the room in question used by respondent No.1 was locked by the petitioner-management. Aggrieved by the said act of petitioner-Trust the respondent No.1 filed Criminal Case No.2203 of 1990 in Metropolitan Magistrate, Court No.5, Ahmedabad under sections 341, 379 and 114 of the Indian Penal Code. The learned Magistrate was pleased to take cognizance under Section 341 read with Section 114 of IPC and issued summons against the petitioners on 18.1.1991. Aggrieved by the process issued by the learned Magistrate, the petitioners have come before this court under Section 482 of the Criminal Procedure Code.

On the face it appears that the respondent No.1-original complainant, was allowed to use the accommodation under an agreement of licence. The agreement of licence contemplates the discharge of reciprocal obligations between the licensor and licensee. A student/an inmate is entitled to use and occupy the facility in the hostel so long as he goes on making payment of necessary fees/charges in accordance with the agreement and abiding by the rules and regulations. If the parties do not discharge their obligations then the default would amount to a civil wrong rather than criminal action. Mr. Nagarkar, learned advocate for the petitioners, has invited my attention to Annexure B, which is a copy of the plaint of Civil Suit No. 1573 of 1990 filed in the City Civil Court, Ahmedabad, for injunction restraining the present petitioners from preventing the respondent No.1 from using and availing the facility in the hostel. Thus, for so-called default or breach of agreement, the respondent No.1 had already invoked civil jurisdiction. During the course of hearing, Mr. Nagarkar has informed the Court that the injunction granted ex-parte was vacated by the Civil Court vide its order dated 7.1.1992.

If this be so, the respondent No.1 did not have any right to use the room in question and avail of the facilities in the hostel premises managed by present petitioners. In my view, the act of the petitioners, on the face of it, amounts to civil wrong and, therefore, appropriate course for the respondent No.1 would be to seek civil remedy rather than filing complaint in question. When the act does not constitute an offence filing of criminal complaint by respondent No.1, is nothing else but abuse of process of court and cannot be allowed to be continued. In the result, the complaint and process issued deserve to be quashed and set aside.

In the facts and circumstances of the case, the petition is allowed. The complaint filed and the order passed in Criminal Complaint No.2203/90 by the learned Metropolitan Magistrate, Court No.5, Ahmedabad is hereby quashed and set aside. Rule made absolute accordingly.